REMARKS

Claims 29-38 are pending. Applicant respectfully requests reconsideration in view of the following remarks.

Interview Summary

Applicant thanks Examiner Alicia Baturay for the courtesies extended to the undersigned attorney, during the telephone interview of October 10, 2010. During the interview, the features of claim 29 were discussed in view of U.S. Patent Application Publication 2004/0153866 by Guimbellot et al. ("Guimbellot"). No agreement was reached.

Claim Rejections – 35 USC §103

Claims 29-32, 34, and 38 stand rejected under 35 USC 103 as unpatentable over U.S. Patent Application 2003/0046426 by Nguyen ("Nguyen") in view of U.S. Patent Application Publication 2004/0153866 by Guimbellot et al. ("Guimbellot ") and further in view of U.S. Patent Application Publication 2003/0130980 by Bell et al. ("Bell "). Claim 33 stands rejected under 35 USC 103 as unpatentable over Nguyen in view of Guimbellot, in view of Bell, and further in view of U.S. Patent No. 7,454,516 to Wienert et al. ("Wienert"). Claims 35-37 stand rejected under 35 USC 103 as unpatentable over Nguyen in view of Guimbellot, in view of Bell, and further in view of U.S. Patent Application Publication 2003/0224788 by Leung et al. ("Leung"). Applicant traverses these rejections for the following reasons.

Independent Claim 29

Guimbellot, Nguyen, and Bell, either alone or in combination, fail to teach or suggest all of the features of independent claim 29. (*Contra*, Office Action, p. 2, 18-20.) Contrary to the assertion on page 4, lines 18-20, of the Office Action, Guimbellot fails to teach or suggest the features of claim 29 of "the first device being configured to transmit node function definition data to the second device in response to receipt of the transfer

instruction." Neither Nguyen nor Bell makes up for the deficiencies. Guimbellot fails to teach or suggest these features for at least the following two reasons.

First, Guimbellot describes nodes in a cluster negotiating ownership of resource groups based on node capabilities and node preference lists, not the features of claim 29 of "the first device being configured to transmit node function definition data to the second device in response to receipt of the transfer instruction." (*See*, Guimbellot ¶[0052].) In Guimbellot, a "resource group is a collection of resources managed by the cluster service as a single, logical unit." (Guimbellot, ¶[0048].) In Guimbellot, all nodes in the cluster "that are capable of hosting the resource groups may negotiate among themselves for ownership." (Guimbellot, ¶[0052].) "This negotiation is based on node capabilities, current load, application feedback, or a node preference list." (*Id.*) Thus, a node's existing capabilities determine whether the node may accept ownership. (*Id.*) "Once negotiation of the resource group is complete, all nodes ... update their databases and keep track of which node owns the resource group." (Guimbellot, ¶[0052].) The "transfer" described in paragraph [0058] of Guimbellot refers to the transfer in ownership negotiated amongst the nodes. Negotiating ownership of a logical group of resources, and keeping track of ownership of that logical group once negotiation is complete, fails to teach or suggest the features of claim 29 of "the first device being configured to transmit node function definition data to the second device."

Second, Guimbellot fails to teach or suggest the features of claim 29 "the first device being configured to transmit node function definition data to the second device in response to receipt of the transfer instruction." Neither Nguyen nor Bell makes up for the deficiencies. The failed node described in paragraph [0052] of Guimbellot has been construed in the Office Action as equivalent to the feature of claim 29 of "the first device." (Interview Summary dated October 20, 2010.) In Guimbellot, fail-over "requires determining what groups were running on the failed node and which nodes should take ownership of the various resource groups" (Guimbellot, ¶0052])(emphasis Applicant's). During fail-over, the failed node in Guimbellot transmits nothing because it has failed. Thus, Guimbellot fails to teach or suggest the features of claim 29 of "the first device being configured to transmit node function definition data to the second

device in response to receipt of the transfer instruction." As acknowledged on p. 4, lines 9-13, of the Office Action, Nguyen also fails to teach or suggest these features. Bell fails to make up for the deficiencies of Guimbellot and Nguyen.

Also, Guimbellot, Nguyen, and Bell, either alone or in combination, fail to teach or suggest the features of claim 29 of "a function relocation unit configured ... to determine new node locations of at least one node function, and to relocate the at least one node function to the new node locations in accordance with a relocation plan." (*Contra*, Office Action, p. 3, lines 9-13.) The features of "a function relocation unit" were construed to be equivalent to the recited "path restructure unit" in the Office Action. During patent examination, the USPTO must interpret the scope of claims in patent applications on the basis of the claim language. MPEP §2111. Claim 29 recites the features of "the function relocation unit being further configured to transmit a transfer instruction to a first device for relocation of the at least one node function from the first device to a second device ... the first device being configured to transmit node function definition data to the second device in response to receipt of the transfer instruction, the node function definition data comprising executable code that implements the at least one node function." In addition, claim 29 recites the features of "a path restructure unit configured to restructure a structure of paths in the network into an optimum condition." Thus, the "function relocation unit" recited in claim 29 is different from the "path restructure unit" recited in claim 29. Nguyen describes a system that "simply reroutes traffic around points of congestion." (Nguyen, ¶[0065].) In particular, Nguyen describes rerouting by determining new paths and changing existing paths. (Nguyen, ¶ [0121].) Thus, Nguyen fails to teach or suggest the features of claim 29 of "a path restructure unit configured to restructure a structure of paths in the network" and "a function relocation unit configured ... to relocate the at least one node function." Guimbellot and Bell also fail to teach or suggest these features.

Furthermore, during patent examination, the USPTO must interpret the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." MPEP §2111. In light of at least

paragraphs [00186]-[00189] of specification, "a function relocation unit" is different from the recited "path restructure unit." Nguyen describes rerouting by determining new paths and changing existing paths. (Nguyen, ¶¶[0065]; and [0121].) Accordingly, Nguyen fails to teach or suggest the features of claim 29 of "a path restructure unit configured to restructure a structure of paths in the network" and "a function relocation unit configured ... to relocate the at least one node function."

As indicated above, Bell fails to bridge the gap. Instead, Bell describes an "OROUTED daemon" on one machine that "is modified (preferably through a standard software modification procedure used in the office maintaining the OROUTED product) to add a data migration function 220 which will create new configuration files." (Bell, ¶[0050].) The new configuration files are created so that the configuration files are compatible with the modified OROUTED product. (Bell, ¶[0050] and Abstract.) Accordingly, Bell fails to teach or suggest the features of "the first device being configured to transmit node function definition data to the second device in response to receipt of the transfer instruction." In addition, Bell also fails to teach or suggest the features of "a function relocation unit configured ... to determine new node locations of at least one node function, and to relocate the at least one node function to the new node locations in accordance with a relocation plan."

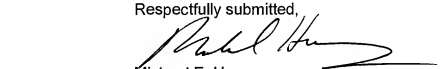
For at least the foregoing reasons, Guimbellot, Nguyen, and Bell, either alone or in combination fail to teach or suggest all of the features of claim 29. Wienert and Leung are cited in connection with features of the dependent claims. Wienert and Leung also fail to teach or suggest the features not taught or suggested by Guimbellot, Nguyen, and Bell. Accordingly, Guimbellot, Nguyen, and Bell, either alone or in combination, fail to teach or suggest all of the features of independent claim 29.

Dependent Claims 30-38

Claims 30-38 depend from independent claim 29. Thus, dependent claims 30-38 are allowable for at least the same reasons that independent claim 29 is allowable.

The present pending claims of this application are allowable and Applicant respectfully requests the Examiner to issue a Notice of Allowance for this application. Should the Examiner deem a telephone conference to be beneficial in expediting allowance/examination of this application, the Examiner is invited to call the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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